

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
96 WYTHE ACQUISITION LLC, : Case No. 21-22108 (SHL)
: :
Debtor. :
: :
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NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 23, 2021 (the "Petition Date"), 96 Wythe Acquisition LLC (the "Debtor") commenced the above-captioned case (the "Chapter 11 Case") by filing a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"). On May 31, 2022, the Court approved the appointment of Stephen S. Gray as the Chapter 11 Trustee (the "Trustee") for the Debtor.¹

2. On October 21, 2022, the Trustee filed a motion (the "Motion")² seeking, among other things, entry of an order (the "Bid Procedures Order") (a) approving the Auction (as defined below) and the bid procedures (the "Bid Procedures") to be used in connection with the sale (the "Sale") of the Debtor's assets, including the Property (collectively, the "Assets"); (b) establishing procedures for the Trustee to designate a stalking horse bidder or stalking horse bidders with respect to certain or all of the Assets (each a "Stalking Horse Bidder") and to enter into a stalking horse agreement or stalking horse agreements (each, a "Stalking Horse Agreement") with a Break-Up Fee and Expense Reimbursement (together, the "Bid Protections"); (c) establishing certain dates and deadlines for the Sale process, including scheduling an auction of the Assets (the "Auction"), if necessary, in accordance with the Bid Procedures, and the hearing with respect to the approval of the Sale (the "Sale Hearing"); (d) approving the form and manner of notice of the Auction and Sale Hearing; and (e) approving procedures for the assumption and assignment of executory contracts and unexpired leases (the "Assumption and Assignment Procedures") [Docket No. 752].

¹ Following evidentiary hearings conducted on May 17 and 25, 2022 and post-hearing oral argument on May 26, on May 27, 2022 the Court entered its *Order Granting Motions to Appoint a Chapter 11 Trustee* [Docket No. 591]. On May 31, 2022, the United States Trustee filed his *Notice of Appointment of Chapter 11 Trustee* [Docket No. 592] and filed an application for an order approving the appointment of Stephen S. Gray, as the Chapter 11 Trustee (the "Trustee") of the estate of the Debtor [Docket No. 593].

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, or the Bid Procedures, as applicable.

3. On November 15, 2022, the Court entered the Bid Procedures Order [Docket No. 784]. The Bid Procedures provide as follows:

- a. **Auction.** If two or more Qualified Bids with respect to all of the Assets are received by the Bid Deadline, the Trustee will conduct the Auction to determine the highest or otherwise best Qualified Bid with respect to such Assets. The **Auction will take place at 10:00 a.m. (prevailing Eastern Time) on December 14, 2022** (such date, or such other date allowed under these Bid Procedures as the Trustee may notify any Qualified Bidder who has submitted a Qualified Bid, and counsel to the Secured Lender, the "Auction Date") and be held at a location to be determined. The Auction shall be recorded. Only a Qualified Bidder that has submitted a Qualified Bid (including any Stalking Horse Bidder or Stalking Horse Bidders) will be eligible to participate at the Auction, subject to such limitations as the Trustee may impose in good faith. A reasonable number of representatives of the professional advisors of any Qualified Bidder will be permitted to attend and observe the Auction. The Trustee may, in the exercise of his business judgment, adjourn the Auction. Any Qualified Bidder that wishes to take part in this process and submit a bid for the Assets must submit their competing Bid prior to the Bid Deadline and in accordance with the Bid Procedures. If two or more Qualified Bids are not received by the Bid Deadline, the Trustee may, after consulting with the Consultation Parties, determine not to conduct the Auction. If only one Qualified Bid with respect to a Sale is received by the Bid Deadline, the Trustee may, after consulting with the Consultation Parties, select the Potential Bidder Purchase Agreement or Stalking Horse Agreement, as applicable, of such Qualified Bidder to be the Successful Bid and such Qualified Bidder shall be the Successful Bidder with respect to the applicable Sale.
- b. **Sale Hearing.** The hearing to consider approval of the Successful Bid with respect to the Sale in accordance with the Bid Procedures (the "Sale Hearing") is scheduled to take place on **December 20, 2022 at 2:00 p.m. (prevailing Eastern Time)**. At the Sale Hearing, the Trustee will present the Successful Bid or Successful Bids to the Court for approval. The Sale Hearing may be adjourned by the Trustee in consultation with the Consultation Parties and the Successful Bidder, from time to time, upon the filing of a notice of adjournment with the Court.
- c. **Sale Objection Deadlines.** Objections, if any, to the Sale of the Assets free and clear of all liens, claims, interests, and encumbrances must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of this Court; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court no later than (i) **December 12, 2022 at 5:00 p.m. (prevailing Eastern Time)**, with respect to the proposed Sale of the Assets, or (ii) **December 16, 2022 at 4:00 p.m. (prevailing Eastern Time)**, with respect to the Sale of any Assets, and served on: (i) counsel to the Trustee, Togut, Segal & Segal LLP, Attn.: Frank A. Oswald, Esq. (frankoswald@teamtogut.com) and Amanda C. Glaubach, Esq. (aglaubach@teamtogut.com); and (ii) co-counsel to

the Secured Lender, Kramer Levin Naftalis & Frankel LLP, Attn.: Adam C. Rogoff, Esq. (Arogoff@kramerlevin.com) and Nelson Mullins Riley & Scarborough, LLP, Attn.: Lee B. Hart, Esq. (lee.hart@nelsonmullins.com). Unless an objection is timely served and filed in accordance with this notice, it may not be considered by the Court and the Court may grant the relief requested without further hearing and notice.

4. **Key Dates and Deadlines.** The key dates for the Sale process are as follows:

Key Event	Deadline
Bid Deadline	Monday, December 12, 2022 at 5:00 p.m. (ET)
Sale Objection Deadline	Monday, December 12, 2022 at 5:00 p.m. (ET)
Proposed Assumption / Cure Amounts Objection Deadline	Monday, December 12, 2022 at 5:00 p.m. (ET)
Deadline for Trustee to notify bidders of their status as Qualified Bidders	Tuesday, December 13, 2022 at 12:00 p.m. (ET)
Auction (if necessary)	Wednesday, December 14, 2022 at 11:00 a.m. (ET)
File Notice of Successful Bidder	Thursday, December 15, 2022 at 4:00 p.m. (ET)
Supplemental Sale Objection Deadline	Friday, December 16, 2022 at 4:00 p.m. (ET)
Adequate Assurance of Future Performance Objection Deadline	Friday, December 16, 2022 at 4:00 p.m. (ET)
Sale Briefing and any Replies	Monday, December 19, 2022 at 12:00 p.m. (ET)
Sale Hearing	Tuesday, December 20, 2022 at 2:00 p.m. (ET)
Deadline for Sale Closing	Friday, December 30, 2022

[Concludes on Following Page]

5. **Conclusion.** This notice (the “Sale Notice”) and any Sale Hearing are subject to the fuller terms and conditions of the Motion and the Bid Procedures Order, which shall control in the event of any conflict, and the Trustee encourages parties in interest to review such documents in their entirety. Parties interested in receiving more information regarding the Sale of the Debtor’s Assets or copies of any related document, including the Motion or the Bid Procedures Order, may make a written request to counsel to the Trustee, Togut, Segal & Segal LLP, Attn.: Frank A. Oswald, Esq. (frankoswald@teamtogut.com) and Amanda C. Glaubach, Esq. (aglaubach@teamtogut.com). In addition, copies of the Motion, the Bid Procedures Order, and this Sale Notice can be found on the Court’s website at <https://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

DATED: New York, New York
November 17, 2022

STEPHEN S. GRAY
Not Individually But Solely in His
Capacity as Chapter 11 Trustee
By His Attorneys,
TOGUT, SEGAL & SEGAL LLP
By:

/s/ Frank A. Oswald

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